

FILED

OCT 27 1923

WM. R. STANSBURY
CLERK

In the Supreme Court

OF THE
United States

IN ADMIRALTY

OCTOBER TERM, 1923

No. 128

SVEN HAAVIK,

vs.

ALASKA PACKERS ASSOCIATION,

Appellant,

Appellee.

APPELLANT'S REPLY BRIEF.

H. W. HUTTON,

Pacific Building, San Francisco,

Attorney for Appellant.

In the Supreme Court

OF THE

United States

IN ADMIRALTY

OCTOBER TERM, 1923

No. 128

SVEN HAAVIK,

Appellant,

VS.

ALASKA PACKERS ASSOCIATION,

Appellee.

APPELLANT'S REPLY BRIEF.

Appellant respectfully requests consideration of the following reply brief, the italics in which are the writer's.

I.

TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW.

Counsel for appellee overlooked the Fifth Amendment to the Constitution, the terms of which are of general application and which reads:

“Section 1. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment

of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; *nor be deprived of* life, liberty, or *property*, without due process of law; nor shall private property be taken for public use without just compensation."

That section and the decisions of this court and all other laws applicable are operative in Alaska under the following language in its organic act, to-wit:

"Sec. 3. That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the territory as elsewhere in the United States." * * *

"Sec. 9. The legislative power of the Territory shall extend to all rightful subjects of legislation *not inconsistent with the* Constitution and laws of the United States." * * *

If the Fourteenth Amendment to the Constitution of the United States is not operative in Alaska, the Fifth Amendment is, and we asserted the claim in our brief that the taxing of a non-resident is the taking of property without due process of law, and that no taxing locality has the jurisdiction to so tax, because this court has repeatedly said so.

We again call the court's attention to the following language on page 10 of our brief, quoted from

Union Transit Company v. Kentucky, 199
U. S. 202.

"The power of taxation, indispensable to the existence of every government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property or in the creation and maintenance of public conveniences in which he shares, such, for instance, as roads, bridges, sidewalks, pavements, and schools for the education of his children. *If the taxing power be in no position to render these services, or otherwise to benefit the person or property taxed, and such property be wholly within the taxing power of another State, to which it may be said to owe an allegiance and to which it looks for protection, the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax, and has been repeatedly held by this court to be beyond the power of the legislature and a taking of property without due process of law.*" (Several authorities cited.)

And also to the several other authorities we cited to the same point. The question in this case is, whether the mere temporary presence of a person for the purposes of trade and commerce within a given locality gives such person a taxable status. The decisions are practically uniform that it does

not; it is not the power to pass a given law that is involved in this case, but the question of the operation of the law on persons who have always for wise purposes been held not subject to such laws.

Of course if Alaska is not a territory of the United States, and not subject to the Constitution and laws of the United States, then the argument of counsel for appellee is applicable; if, on the contrary, Alaska is subject to the Constitution and laws of the United States it cannot be applicable.

If the District of Columbia should undertake to collect a poll-tax from an attorney that went to Washington to argue a case before this Honorable court, there is no question this court would hold such an attempt void, and we cannot see any difference between such a state of facts and the facts of this case.

And as to counsel's reference to the Hedenskoy case, we can simply call this court's attention to the fact that that case holds that both a non-resident and his property are taxable, as does *Fennell v. Pauly*, cited therein, and several hundred other decisions in the United States, and several of this court hold that it and he is not taxable. The decision being contrary to the overwhelming mass of authority it ought not to be sustained.

II.

SUBDIVISION 10F, SEC. 2 OF ART. IV OF THE CONSTITUTION.

As to the application of sub. 1 of Section 2 of Art. IV of the Constitution to this case, it reading:

“The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.”

We can see no distinction at all between this case and the following authorities, to-wit:

Stoutenburgh v. Hennick, 129 U. S. 141;

Hanley v. Kansas City Southern Ry. Co., 187 U. S. 617.

We have already called the court's attention to the following language in the organic law of Alaska:

“Sec. 3. That the Constitution of the United States, * * * shall have the same force and effect within said Territory as elsewhere in the United States, * * *”

That means the whole of the Constitution, not such parts as Alaska wishes to pick out or disregard as being favorable or unfavorable to it, and the following is the law as decided by this court on a similar matter,

Talbott v. Silver Bow County, 139 U. S. 438-444.

“Still further, while the word State is often used in contradistinction to Territories yet in its general public sense, and as sometimes used in the statutes and the proceedings of the gov-

ernment, it has the larger meaning of any separate political community, including the District of Columbia and the Territories, as well as those political communities known as States of the Union. Such a use of the word State has been recognized by the decisions of this court, * * *

In that case States were allowed to tax bank stock, and it was held by this court that the word State included "Territories". But, irrespective of all that, the law complained of reads:

"Fishermen who are not residents of the Territory, five dollars (\$5) per annum. The term 'fishermen' shall mean to include all persons employed on a boat engaged in fishing."

If there is a fishing boat, the person owning the boat has a property right in the right to use it in fishing. If the owner of the boat is a resident of Alaska he can use his boat without this tax; if he is not he cannot. The property right of the non-resident is thus taxed and the property right of the resident is not taxed, clearly contrary to the following language in Sec. 9 of the organic act of Alaska.

"nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents."

And counsel for appellee has utterly failed to show that the above mentioned section of the Constitution does not apply in Alaska.

The provision in Alaska's organic act giving it the right to impose "other and additional taxes or

licenses", does not give the legislature the right to impose unconstitutional taxes or licenses, nor does it give a right to tax interstate and foreign commerce as both of these taxes do.

It will be remembered that the primary purpose of the venture in this case was to obtain fish to be used in the States of the United States outside of Alaska, and foreign countries, the vessel on which appellant was employed left San Francisco for that purpose. Defendant, the operator of the vessel, was a corporation foreign to Alaska; it furnished and carried to Alaska everything necessary to can the salmon except the salmon, even to the food of the men. The river in Alaska was the spawning ground of the salmon, and when the salmon went in to spawn the fishing commenced and when canned the salmon was the property of a non-resident and never had a taxable situs in Alaska, on the contrary, everything connected with it was transitory, so there is no resemblance between this case and the cases of *Oliver Iron Co. v. Lord*, and *Heisler v. Thos. Colliery Co.*, cited in appellant's brief. Both of those cases were mining cases. Mining is not necessarily interstate commerce. The fishing business herein was interstate and foreign commerce from its inception, and again we have the additional matter that appellant was a non-resident and under the decisions was not taxable at all.

Counsel for appellee mentions the plenary power of Congress over the Territories, but the

decisions he cites state that such power is controlled by the provisions of the Constitution, as necessarily it must be, but Congress did not pass either of the laws complained of here. If it had they would be equally unconstitutional. Appellant herein did not spend the whole of the summer in Alaska, but what period he did spend there was transitory, never fixed, always with the intention of leaving as soon as his interstate and foreign commerce engagement was ready to be continued by his leaving Alaska, and his taxable allegiance was at all times solely with the State of California.

We respectfully submit that both of the taxes in this instance are void.

Dated, San Francisco,
October 15, 1923.

H. W. HUTTON,
Attorney for Appellant.